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The Lessons of Seattle: Learning from the Failed Third WTO Ministerial Conference

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The Lessons of Seattle: Learning from the Failed Third WTO Ministerial Conference

Ewell E. Murphy, Jr.*

TABLE OF CONTENTS

I. INTRODUCTION	274
II. TWO INCOMPLETE TRIANGLES	274
A. <i>The Triangle of the Past</i>	274
B. <i>The Triangle of the Present</i>	275
III. THE ACHIEVEMENTS	276
A. <i>Reducing Conventional Trade Barriers</i>	276
B. <i>Regulating Trade Retaliations</i>	276
1. <i>Antidumping</i>	277
2. <i>Countervailing Duties</i>	277
3. <i>Safeguards</i>	278
4. <i>Section 301</i>	278
C. <i>Expanding the Concept of "Trade"</i>	279
1. <i>Intellectual Property</i>	279
2. <i>Investment</i>	279
IV. MAKING IT WORK	280
V. THE REVOLUTION OF ECONOMIC GLOBALIZATION	282
VI. SEATTLE'S TWO CONFRONTATIONS	284
A. <i>The Messenger and the Message</i>	284
B. <i>Disputing the Message</i>	285
C. <i>Attacking the Messenger</i>	285
VII. CONCLUSION	286

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I. INTRODUCTION

It was, to put it mildly, a disaster—35,000 demonstrators and 600 arrests; at least \$3,000,000 in vandal damage; state troopers and the National Guard called in to reinforce 4,000 overwhelmed city police, whose chief later resigned in shame. Even worse than the physical damage to the city of Seattle was the damage to the reputation of the United States as host to the Third Ministerial Conference of the World Trade Organization (WTO). The WTO planned the Third Ministerial Conference to inaugurate a Millennium Round of trade negotiations. Now, the Millennium Round has aborted, the momentum of trade liberalization has slowed almost to a halt, and the forces of protectionism are on the prowl.

The disaster so shocked the WTO delegates that they are having difficulty imagining it could have any positive results. However, with the perspective of time, the delegates may come to see a few. One benefit is that U.S. citizens are now more aware of the WTO. The WTO is a powerful framework of international law that touches the everyday life of each U.S. citizen. In addition, the United States was the principal actor in the half century of international trade relationships that created the WTO. But before the Seattle disaster, the average U.S. citizen did not realize that the WTO existed, much less what it was about. A review of the half century of trade relationships and the framework it created can serve as a guide to the lessons that can be learned from the disaster in Seattle.

II. TWO INCOMPLETE TRIANGLES

The history of the WTO is a tale of two triangles, each of them incomplete: a triangle of the past and a triangle of the present.

A. *The Triangle of the Past*

The incomplete triangle of the past was the grand triangle of world governance that the United States and its allies tried to create in order to hold their shattered world together after World War II. The first side of that triangle is the United Nations, for peace-keeping. The second side consists of the World Bank and the International Monetary Fund for international finance. Finally, the third side was supposed to be an International Trade Organization (ITO) to regulate transnational commerce. The first two sides of the triangle were assembled, but the third side was left incomplete, primarily as a result of the United States' defection.

In 1947, the United States and other trading nations came up with a master agreement on transnational commerce, the General Agreement on Tariffs and Trade (GATT). The GATT countries needed an organization to administer the agreement, so in 1948 they met in Havana and agreed to create the ITO. Unfortunately, the U.S. Congress had other ideas. Congress thought that the United States joined too many international organizations and criticized the GATT Agreement as then written.

Thus, the GATT Agreement was amended, and the ITO never came up for Congressional vote. The GATT Agreement was left without an organization to administer it.

GATT limped along that way for nearly half a century as an agreement without an organization. GATT proceeded to act like an organization, however, with GATT nations calling themselves GATT "members," as though they belonged to an organization. But in reality, GATT was merely an agreement, and no organization actually existed to regulate the world's transnational commerce.

Transnational commerce flourished, nonetheless, and with that flourishing came five decades of initiatives, confrontations, negotiations, and compromises that the GATT nations facilitated, as best they could, in the context of a non-organizational GATT. This led to further GATT amendments. For the GATT nations who were willing to open up their trade more, the result was side agreements called the GATT "Codes." All the while, GATT remained a mere agreement; the third side of the grand triangle of world governance was still not in place.

Nevertheless, GATT kept plugging along, and the GATT nations grew in number from 23 in 1947¹ to 129 at the WTO's inception in 1995.² As their numbers grew, the GATT nations tackled many problems of world trade. First, they tackled nuts-and-bolts problems like import duties and customs valuation. Then, the GATT nations took on more complicated problems like antidumping, countervailing duties, and government procurement. These were mainly addressed with the GATT Codes. The more ambitious GATT Codes laid the foundation for the Uruguay Round—eight long years of negotiations that elevated the relationship of the GATT nations from parties to an agreement to members of an organization. In 1995, with the creation of the WTO, the incomplete triangle of the past was completed. The third side of the grand triangle of world governance was, at last, in place.

B. The Triangle of the Present

The three sides of the present triangle are those sectors of transnational commerce addressed by the WTO. The first sector is transnational commerce in tangible goods. GATT covered this sector, and by assuming GATT's functions the WTO solidly installed the first side of its triangle. The second sector is transnational commerce in intellectual property, an innovation of the Uruguay Round. Although the WTO has only recently begun addressing this sector, its authority to do so is clear, and the second side of the triangle is established. The WTO calls the third sector transnational commerce in "services," but lawyers refer to it as transnational "investment." In this sector the WTO's authority is not fully articulated, and its

1. See JOHN H. JACKSON, *THE WORLD TRADING SYSTEM* 40 (2d ed. 1997).

2. See BERNARD HOEKMAN & MICHEL KOSTECKI, *THE POLITICAL ECONOMY OF THE WORLD TRADING SYSTEM* 1, Annex I (1995) [hereinafter HOEKMAN/KOSTECKI].

performance has just begun. Consequently, the third side of the WTO triangle is not yet firmly in place.

III. THE ACHIEVEMENTS

During the last half century of trade relationships, the achievements of GATT and the WTO came in three phases: reducing conventional trade barriers, regulating trade retaliations, and expanding the concept of "trade."

A. Reducing Conventional Trade Barriers

In its first phase, GATT was quite successful in reducing conventional trade barriers. GATT simplified inspection procedures, standardized rules of origin, and, most importantly, lowered import duties. By 1995, when WTO was formed, the average import duty its developed country members imposed on industrial goods was only 6.3 percent, and they promised to reduce that to 3.9 percent within five years.³ Compared to the high rates those countries were charging in the 1930s, these low import duty rates are impressive.

The less-developed WTO members are also reducing their import duty rates, but at a slower pace. Additionally, all WTO members have promised to open up to agricultural and textile products by replacing their import quotas with diminishing import duty rates.⁴

B. Regulating Trade Retaliations

In its second phase, GATT started trying to regulate trade retaliations. This proved to be a much more difficult phase.

"Trade retaliations" are administrative weapons aimed at imports: for example, antidumping,⁵ countervailing duties,⁶ safeguards,⁷ and Uncle Sam's accusatory section 301.⁸

3. See JEFFREY J. SCHOTT, *THE URUGUAY ROUND: AN ASSESSMENT* 152 (Inst. for Int'l Econ. 1994); cf. *THE NEW GATT 2* (Susan M. Collins & Barry P. Bosworth eds., The Brookings Institution 1994) [hereinafter Collins/Bosworth].

4. See SCHOTT, *supra* note 3, at 147-51.

5. Penalty duties are imposed on imports that come in at lower than source country prices. See *infra* Part III.B.1.

6. Penalty duties are imposed to offset source country subsidies. See *infra* Part III.B.2.

7. The importing country can renege on promised access if too many imports start coming in. See *infra* Part III.B.3.

8. Trade Act of 1974 § 301, 19 U.S.C. § 2411 (1994).

1. Antidumping

Antidumping began in 1916 with the first U.S. antidumping statute,⁹ and as of 1991, the United States had "imposed more dumping penalties . . . than . . . any other government in the world."¹⁰ Now, more than forty countries have antidumping laws,¹¹ and antidumping has become a weapon of retaliation all over the world. In the early 1960s, GATT countries initiated less than twelve antidumping investigations per year.¹² Between 1985 and 1992, however, this number increased to 1,040.¹³

Over the years, GATT and the WTO have moderated antidumping significantly. The original GATT Agreement imposed a "material injury" test, which meant that a GATT nation could not impose antidumping duties on GATT-source imports without showing that the imports hurt some domestic industry. GATT's Antidumping Codes followed, elaborating on this requirement. Currently a WTO agreement¹⁴ imposes additional limitations. For example, an antidumping investigation requires the support of a certain percentage of the affected domestic industry. In addition, antidumping penalties cannot be used to correct minor price differentials, and once antidumping penalties are imposed, they are supposed to end after fixed terms.

2. Countervailing Duties

The same pattern has developed in countervailing duties. The United States invented countervailing duties in 1897¹⁵ and has vigorously imposed them ever since. Although other countries now have similar laws on their books and have begun to bring actions under these laws, "the United States is the only country in the world that has extensively used countervailing duties."¹⁶

The original GATT Agreement restricted the imposition of countervailing duties with a "material injury" test. Subsequently, a GATT Subsidies Code further restricted the use of countervailing duties. Finally, a WTO agreement¹⁷ limits them further. This trend is similar to antidumping.

9. See JAMES BOVARD, *THE FAIR TRADE FRAUD* 110 (St. Martin's Press 1991).

10. *Id.* at 107.

11. See SCHOTT, *supra* note 3, at 78.

12. See *id.*

13. See HOEKMAN/KOSTECKI, *supra* note 2, at 172.

14. See Agreement on Implementation of Article VI of GATT, Dec. 15, 1993, GATT MULTILATERAL TRADE NEGOTIATIONS: THE URUGUAY ROUND FINAL ACT EMBODYING THE RESULTS OF THE URUGUAY ROUND OF MULTILATERAL TRADE NEGOTIATIONS (1994).

15. See JACKSON, *supra* note 1, at 285.

16. *Id.* at 281.

17. See Agreement on Subsidies and Countervailing Measures, Dec. 15, 1993, GATT MULTILATERAL TRADE NEGOTIATIONS: THE URUGUAY ROUND FINAL ACT EMBODYING THE RESULTS OF THE URUGUAY ROUND OF MULTILATERAL TRADE NEGOTIATIONS (1994).

3. Safeguards

The United States created safeguards in 1943 while negotiating a trade agreement with Mexico¹⁸ and later added them to the U.S. Code as section 201 procedures.¹⁹ The original GATT Agreement and now a WTO agreement²⁰ restrain present day use of safeguards.

4. Section 301

More confrontational than safeguards are procedures by which one nation formally accuses another of unfair trade practices and threatens to retaliate if the misbehaving nation does not stop. The United States has used these procedures aggressively, both to reduce imports into the United States and to achieve greater access for U.S. exports abroad.

The most notorious example is section 301, under which the U.S. government makes unfair trade accusations on its own initiative or at the request of private U.S. groups.²¹ Section 301 is another U.S. invention, and until 1984 "was virtually unique in the world";²² it "is to many countries the classic symbol of American unilateralism."²³

By threatening retaliation under section 301, the United States was frequently able to persuade another nation or its industries to agree to limit their exports or accept U.S. exports. Examples are the arrangements between the United States and Japan that restricted the export of Japanese cars to the United States. Now, a WTO agreement²⁴ regulates such arrangements, requires old ones to be phased out, and limits the duration of new ones. Nevertheless, section 301 still authorizes the U.S. President to make such arrangements, whether they meet WTO requirements or not.²⁵

18. See JACKSON, *supra* note 1, at 179.

19. Trade Act of 1974 § 201, 19 U.S.C. § 2251 (1994).

20. See Agreement on Safeguards, Dec. 15, 1993, GATT MULTILATERAL TRADE NEGOTIATIONS: THE URUGUAY ROUND FINAL ACT EMBODYING THE RESULTS OF THE URUGUAY ROUND OF MULTILATERAL TRADE NEGOTIATIONS (1994) [hereinafter Agreement on Safeguards].

21. See generally C. O'Neal Taylor, *The Limits of Economic Power: Section 301 and the World Trade Organization Dispute Settlement System*, 30 VAND. J. TRANSNAT'L L. 209 (1997) (providing a masterful analysis of the use of § 301 through the Uruguay Round).

22. JACKSON, *supra* note 1, at 129.

23. Homer E. Moyer, Jr., *U.S. Institutions, Not the WTO, May Hold the Answer*, in THE WORLD TRADE ORGANIZATION: MULTILATERAL FRAMEWORK FOR THE 21ST CENTURY AND U.S. IMPLEMENTING LEGISLATION 725, 742 (Terence P. Stewart ed. 1996).

24. See Agreement on Safeguards, *supra* note 20, at 1.

25. See generally Daniel Prizin & Gary G. Yerkey, *WTO Panel Says Section 301 Provisions Compatible With the Multilateral Trade Rules*, 17 INT'L TRADE REP. 6 (2000) (reporting conflicts between U.S. statutory time limits for § 301 actions and WTO regulations). In a recent WTO proceeding, the European Communities contended that U.S. statutory time limits for § 301 actions are inconsistent with the dispute resolution time-frame of the WTO Dispute Resolution Understanding. See *id.* The WTO Dispute Settlement Body affirmed a holding that the United

C. Expanding the Concept of "Trade"

Two policy objectives, reducing conventional trade barriers and regulating trade retaliations, were in the mainstream of GATT's historic objective of freer transnational commerce in tangible goods. Three of the new WTO agreements fall outside of that mainstream. These new agreements address transnational commerce in two new sectors, intellectual property and what the WTO calls "services" but lawyers call "investment."

1. Intellectual Property

In recent years, the United States has become the world's most zealous champion of intellectual property. Defensively, the United States uses section 337 proceedings²⁶ to exclude and seize goods that infringe U.S. intellectual property. Offensively, it uses section 301 (and section 301's descendants, "Super-301" and specifically "Special 301") to threaten trade retaliation against nations that deny intellectual property rights to U.S. persons.

The WTO's intellectual property agreement is the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs). TRIPs obligates WTO members to enact and enforce national intellectual property laws that meet international standards, and to police their borders against the importation of counterfeit goods.

2. Investment

Effectuating the transition from tangible goods to intellectual property was a big step, but the WTO seems to have made it successfully. The shift from intellectual property to investment is an even bigger step, and it is too early to tell whether the WTO will be able to make this step or not. In the investment arena, the Uruguay Round produced two new agreements, TRIMs (the Agreement on Trade-Related Investment Measures) and GATS (the General Agreement on Trade in Services), but the name of each is a bit deceptive.

States is exonerated by its Statement of Administration Action (submitted by President Clinton and approved by the U.S. Congress), which states that WTO-related actions under § 301 will be "based" on WTO procedures. See *id.*; see also Sean D. Murphy, *WTO Upholds U.S. Section 301 Trade Authority as GATT-Consistent*, 94 AM. J. INT'L L. 348, 376 (2000); see also Ewell E. Murphy, Jr., *Between Washington and the WTO*, 9 INT'L Q. 610, 617 (1997) (discussing the relationship between U.S. legislation and U.S. obligations under WTO agreements); see also Terence P. Stewart, *The Uruguay Round Agreements Act: An Overview of Major Issues and Potential Trouble Spots*, in THE WORLD TRADE ORGANIZATION: MULTILATERAL FRAMEWORK FOR THE 21ST CENTURY AND U.S. IMPLEMENTING LEGISLATION 29, 33 (Terence P. Stewart ed. 1996); see also Amelia Porges, *The Marrakesh Agreement Establishing the World Trade Organization*, in THE WORLD TRADE ORGANIZATION: MULTILATERAL FRAMEWORK FOR THE 21ST CENTURY AND U.S. IMPLEMENTING LEGISLATION 63, 87-88 (Terence P. Stewart ed. 1996); see also Collins/Bosworth, *supra* note 3, at 74-75.

26. Tariff Act of 1930 § 337, 19 U.S.C. § 1337 (1999).

TRIMs sounds like an investment agreement, but it is actually aimed at trade. By TRIMs, WTO members promise each other that, in regulating the admission of foreign investment, they will not impose conditions that hamper trade.

GATS sounds like a trade agreement, but it is aimed at investment. Under GATS, WTO members can negotiate reciprocal access for "services" in agreed sectors of industry. GATS defines "services" broadly enough to include investments such as buying and establishing banks and insurance companies.²⁷

Can the WTO effectively improve access for transnational investment? In pursuing that goal, should WTO members continue to proceed obliquely by means of the WTO's present authority over "services," or should they call a spade a spade and explicitly expand the WTO's authority to include "investment"? Only time will tell which course is more effective, and whether either course can fit the missing third side of the WTO triangle firmly into place.

Two agreements negotiated under GATS are encouraging. The first, the Telecommunications Agreement, was signed on February 15, 1997 by sixty-nine WTO members representing ninety percent of all global communications. The Telecommunications Agreement, subject to ratifications, promised reciprocal telecommunications access beginning in 1998.²⁸ On December 13, 1997, 102 WTO members signed the second agreement. The Financial Services Agreement, also subject to ratifications, promised reciprocal access for banking, insurance, securities and other financial operations, beginning in 1999.²⁹

IV. MAKING IT WORK

The obligations of WTO members to each other are expressed in some twenty agreements. Most of these agreements ["multilateral" agreements], in principle, bind all WTO members. The remainder ["plurilateral" agreements] bind only those members that choose to sign.

Each of these WTO agreements is innovative compared to pre-GATT trade relationships, but the most innovative is the multilateral agreement that enforces the others—the Dispute Settlement Understanding (DSU).³⁰ Before the Uruguay Round,

27. See JACKSON, *supra* note 1, at 309-10 (noting that "when one examines the actual text of the GATS, it is easy to see a number of clauses which in fact relate to investment, to the extent that sometimes persons have suggested that the agreement is actually an 'investors' agreement."). Thus, Article I(2) defines "services" as "the supply of a service"; Article I(3)(b) defines "services" to include "any service in any sector except services supplied in the exercise of a governmental authority"; and Articles XVI and XVII, respectively, promise reciprocal market access and national treatment for "services and service suppliers."

28. See Rossella Brevetti, *Telecommunications: USTR Notes Expected Progress in Mexico's Implementation of Telecom Act*, 16 INT'L TRADE REP. 1277, 1277 (2000).

29. See Daniel Pruzin, *WTO Financial Services Pact to Enter into Force March 1*, 16 INT'L TRADE REP. 265, 265 (1999) (noting that the Financial Services Agreement became effective March 1, 1999, even though 18 ratifications were still pending).

30. See generally *Understanding on Rules and Procedures Governing the Settlement of Disputes* (visited Sept. 24, 2000) <http://www.wto.org/english/tratop_e/dispu_e/dsu_e.htm>.

a trade dispute between GATT nations was resolved ultimately by "consensus." In other words, when the dispute-resolution procedure resulted in a decision, that decision was binding only if approved by a consensus of the GATT nations that chose to vote. Consequently, the GATT nation facing a negative outcome of its case could veto the decision. The DSU reversed the "consensus" rule; a decision is now binding unless disapproved by a consensus of WTO members.

Nonetheless, the WTO's mechanism for enforcing DSU decisions is less coercive than the civil or criminal justice of a nation-state. The WTO does not award damages or collect fines. If a losing nation fails to implement the "recommendations" of the deciding panel, the winning nation's ultimate recourse is to suspend WTO benefits that the winner otherwise owes the loser.³¹ In other words, the winner's ultimate remedy is authorized self-help.

Each year DSU proceedings are increasingly instituted. In 1995, there were approximately twenty new DSU cases. In 1996, new cases numbered in the forties. In 1997, more than fifty new cases were initiated. Finally, in 1998, more than one hundred new cases were instituted.³² The United States has brought more DSU cases than any other WTO member. As of March 1999, the United States had brought forty-four, and had twenty-nine pending—twenty as claimant and nine as respondent.³³ From the beginning, the U.S. win-lose ratio has been high. In early 1998, for example, the United States boasted seventeen DSU wins to only one loss.³⁴

Most DSU cases are not front-page news, but some attract strong public interest. Among well-known U.S. wins are the cases against the European Union for discriminating against Western Hemisphere bananas³⁵ and hormone-treated U.S. beef,³⁶ and against Canada for discriminating against advertising in Canadian issues of U.S. magazines.³⁷ Among well-known U.S. defeats are the case lost to India and others for prohibiting importation of shrimp caught in nets that trap turtles,³⁸ and the

31. See *id.* at Art. 22.2.

32. See *The WTO Crunch!*, THE ECONOMIST, Apr. 4, 1998, at 78.

33. See Gary G. Yerkey, *U.S. Using WTO Dispute Resolution Far More Aggressively Than Other Countries*, 16 INT'L TRADE REP. 540, 540 (1999).

34. See Alan Stowell, *Growing Use of WTO Dispute Panels Could Strain Resources*, Symposium Told, 15 INT'L TRADE REP. 341, 341 (1998).

35. See Rossella Brevetti, *WTO Appellate Body Affirms U.S. Victory in Banana Dispute with EU*, 14 INT'L TRADE REP. 1518, 1518 (1997).

36. See Daniel Pruzin & Gary G. Yerkey, *WTO Approves U.S., Canada Sanctions on EU of \$124.5 Million in Beef Hormone Dispute*, 16 INT'L TRADE REP. 1158, 1158 (1999).

37. See *WTO Appellate Body Affirms Ruling Against Canada in Magazine Case*, 14 INT'L TRADE REP. 1145, 1145 (1997).

38. See Daniel Pruzin, *WTO Formally Adopts Shrimp-Turtle Ruling as Thailand Fears Victory May be Pyrrhic*, 15 INT'L TRADE REP. 1884, 1884 (1998); see also Sean D. Murphy, *U.S. Implementation of WTO Turtle/Shrimp Decision*, 94 AM. J. INT'L L. 348, 361 (2000) (reviewing the WTO ruling prohibiting import of shrimp caught in turtle traps).

case lost to Venezuela and Brazil for a U.S. environmental regulation that discriminated against imported gasoline.³⁹

A recent DSU victory for the European Union over the United States has upset not only major U.S. industries, but the U.S. Congress itself. In February 2000, the WTO Appellate Body affirmed that the Foreign Sales Corporation provisions of the U.S. Internal Revenue Code violate WTO rules against export subsidies.⁴⁰ At stake in this dispute are income tax benefits that saved U.S. companies between \$1.8 and \$2.25 billion during fiscal year 1999.⁴¹ Absent a settlement, the alternatives are grim: either the U.S. Congress repeals the pertinent provisions, or the European Union can impose comparable penalties on U.S. exports.

This prickly problem comes at a sensitive crossroad of U.S. relations with the WTO. The statute by which the United States joined the WTO⁴² requires the U.S. Trade Representative to submit to the U.S. Congress, at five-year intervals, a report on "the value of the continued participation of the United States in the WTO."⁴³ Any member of the U.S. Senate or House of Representatives may introduce a joint resolution within ninety days after such a report is submitted. If jointly passed and reaffirmed over Presidential veto, the resolution would withdraw the United States from the WTO.⁴⁴ On March 2, 2000, the U.S. Trade Representative submitted the first report, concluding that U.S. withdrawal from the WTO would be "unthinkable."⁴⁵ Submission of the report started the ninety-day period running at a time when Congress is scheduled to decide whether to facilitate the admission of China to the WTO by granting China permanent "normal trade relations" with the United States.⁴⁶ Few observers predict that Congress will vote to withdraw the United States from the WTO, but the stakes are enormous and emotions are tense.

V. THE REVOLUTION OF ECONOMIC GLOBALIZATION

The WTO's world-encompassing framework of trade agreements was not constructed in a vacuum. It responded to a basic change in the world itself.

39. See Rossella Brevetti, *Appellate Body Faults U.S. in Gas Case, but Reverses on Conversation Exception*, 13 INT'L TRADE REP. 703, 703 (1996).

40. See Joseph Kahn, *U.S. Loses Dispute on Exports Sales*, N.Y. TIMES, Feb. 24, 2000, at A1; see also Daniel Pruzin, *WTO Appellate Body Upholds Key Finding of Ruling the U.S. FSC's Constitutes Subsidy*, 17 INT'L TRADE REP. 359, 359 (2000).

41. See David Ivanovich, *WTO Ruling Against Tax Break for U.S. Exporters Raises Ruckus*, Hous. CHRON., Mar. 1, 2000, at 1.

42. Uruguay Round Agreements Act, 19 U.S.C. § 3511 (2000).

43. 19 U.S.C. § 3535.

44. See *id.*

45. Gary G. Yerkey, *USTR Sends Report to Congress Urging Continued U.S. Participation in WTO*, 17 INT'L TRADE REP. 394, 394 (2000).

46. See Gary G. Yerkey, *Sen. Lott Plans to Delay WTO Vote Until After Senate Considers NTR for China*, 17 INT'L TRADE REP. 442, 442 (2000).

People today live in the whirlwind of a great revolution. The world is changing faster than statistics can record, more radically than words can describe. The economic factors of existence—what people consume and produce, and how people make a living—are expanding beyond national borders in world-encompassing dimensions. It is the revolution of economic globalization.

A few decades ago, transnational commerce was chiefly the movement of tangible goods, sold in the pattern of “ship-and-forget”: the exporter would sell at the port of export, receive the purchase price, and not venture into the distribution or finance of these goods in the target country. Usually the goods were produced for sale domestically, and their export was merely incidental. Exports were foreign icing on the domestic cake.

In the twenty-first century, the “ship-and-forget” trading pattern is ancient history. Now, products are designed, manufactured, and trademarked for particular markets, either domestic or foreign, while their design, component production, and assembly are outsourced globally. Exporters maintain massive transnational systems of production and distribution protected by intricate worldwide networks of intellectual property and financed by loans and securities offerings at home and abroad. Exports are not merely incidental to domestic sales, but have firm bottom-line objectives of their own. Even within its own domestic market, the value of a product is contingent upon its resistance to competition from imports.

The revolution of economic globalization is proceeding at rapid speed. During the last decade, compared with the growth of the world’s domestic production, merchandise exports grew twice as fast, transnational investment three times as fast, and cross-border securities sales ten times as fast.⁴⁷ In 1950, world exports amounted to 7 percent of gross domestic product, and by 1995 they reached 15 percent.⁴⁸ Annual trading in foreign exchange zoomed from \$15 billion in 1973 to \$1.2 trillion in 1995.⁴⁹

Economic globalization has many accelerators, but two are especially powerful. One is the sophistication of technology. In the past, the goods that moved in transnational commerce were chiefly blue-collar, primary products such as foodstuffs, fuels, minerals, and metals. Now, transnational commerce goods are increasingly high-tech manufactures, white-collar services, and intellectual property rights. Among Organization of Economic Cooperation and Development countries, the cost of labor is now only 5 percent to 10 percent of the cost of production, down from 25 percent in the 1970s.⁵⁰ In 1996, the world’s trade in commercial services equaled about one-fourth of its trade in tangible goods.⁵¹

47. See *One World?*, THE ECONOMIST, Oct. 18, 1997, at 79.

48. See *Trade Winds*, THE ECONOMIST, Nov. 8, 1997, at 85.

49. See *One World*, *supra* note 47, at 80.

50. See *Worldbeater, Inc.*, THE ECONOMIST, Nov. 22, 1997, at 93 [hereinafter *Worldbeater*].

51. See *Trade Winds*, *supra* note 48, at 86.

The second powerful accelerator of economic globalization is the pervasiveness of transnational investment. In 1995, gross sales by foreign affiliates of transnational enterprises were greater than the total exports of the world, and the foreign sales of those affiliates were growing 20 percent to 30 percent faster than their parents' sales at home.⁵² Seventy percent of all transnational technology royalties now involve payments between parent firms and their foreign affiliates.⁵³

VI. SEATTLE'S TWO CONFRONTATIONS

A. *The Messenger and the Message*

The WTO did not cause the revolution of economic globalization. It was the other way around—the revolution created the WTO. The WTO is the framework trading nations constructed to face the revolution, to channel the revolution's energy in manageable directions, and to discipline the trade retaliations the revolution provokes. The WTO comes to the inhabitants of the globalizing world as a messenger, warning that economic globalization is happening and offering to be a guide through the revolutionary storm by serving as the mechanism to help nations most effectively face the revolution, channel its energy, and discipline the resulting trade retaliations.

As a messenger, WTO warns: "World inhabitants, wake up! Your technology, investment flow and appetite for consuming each others' goods are making your world a more intrusive and contentious place to live. The revolution of economic globalization has begun. Your nations have been trying to cope with that revolution for more than fifty years, and have made some agreements to adjust your world to the revolution. I am WTO, the organization your nations formed to administer those agreements. You must make your nations perform those agreements and face the revolution together. If they go back to the old restrictions and retaliations of their pre-GATT days, it will be every nation for itself, and the revolution will shake up you inhabitants even more."

Many world inhabitants do not like this message. It offends those who would rather pretend that there is no revolution of economic globalization. Others acknowledge the revolution, but do not trust an international organization to address it. Some people are upset because they are frightened by some results of the revolution and believe that those results can be cured without addressing the revolution itself.

In Seattle, the people who heard the WTO's message responded as people often do when hearing a message they do not like. Some disputed the message while others attacked the messenger. The message-disputers were the delegates of some

52. See *Worldbeater*, *supra* note 50, at 92.

53. See *id.*

of the 135 WTO member nations. Behind closed doors, they argued for changes in the substance of the WTO-administered trade agreements and methods used to administer them. The messenger-attackers demonstrated in the streets. Amid tear-gas and television cameras, they shrieked for the destruction of the WTO itself. Taken together, these two confrontations produced the disaster of Seattle.

B. Disputing the Message

The confrontation behind closed doors was between the competing national interests of WTO members. The United States and other exporters of farm products opposed agricultural protectionism, most notably by the European Union. The United States and other capital-exporting members pressed for more investment access while some less-developed members resisted. Many less-developed members also demanded more time to meet the costly requirements of the Uruguay Round, such as amending their intellectual property laws to comply with TRIPs. Less-developed members generally resented what they perceived as domination of the WTO by their more affluent peers. Many members sought moderation of antidumping and other U.S. trade retaliations.

Among the more sensitive issues was the conditioning of trade access on labor and environmental standards. The United States asked the WTO to form a Working Group on Trade and Labor.⁵⁴ In an interview with a Seattle newspaper, President Clinton pressed further by saying that eventually there should be trade sanctions to enforce core labor rights around the world.⁵⁵ This enraged many of the WTO members, especially the less-developed nations.

C. Attacking the Messenger

The confrontation in the streets covered a broader spectrum of issues, but labor and the environment were again prominent. Demonstrators shouted that trade access should be conditioned on labor rights, that the WTO should conduct its proceedings more openly, and that the WTO should not restrict a member's environmental regulation⁵⁶ (as by the DSU award against U.S. rejection of shrimp caught in turtle-harmful nets).

54. See generally *U.S. Proposal for a WTO Working Group on Trade and Labor*, Released Nov. 1, 1999, 16 INT'L TRADE REP. 1806 (1999) (reproducing the text of the U.S. request); see also *Seattle Ministerial and Beyond: A Long, Winding Road for the WTO*, 16 INT'L TRADE REP. 1975 (1999) (analyzing key issues the WTO faced in Seattle).

55. See Steven Greenhouse & Joseph Kahn, *Talk and Turmoil: Workers' Rights; U.S. Effort to Add Labor Standards to Agenda Fails*, N.Y. TIMES, Dec. 3, 1999, at A1; see also Steven Greenhouse, *After Seattle, Unions Point to Sustained Fight on Trade*, N.Y. TIMES, Dec. 6, 1999, at A28.

56. See *supra* note 38 and accompanying text (referring to the DSU award against U.S. rejection of shrimp caught in turtle-harming nets).

Some speakers threatened the WTO as an institution. James Hoffa, the Teamsters president, said, "We're going to change WTO or we're going to get rid of WTO."⁵⁷ A U.S. commentator observed, "What's crazy is that the protesters want the W.T.O. to become precisely what they accuse it of already being—a global government. They want it to set more rules—their rules, which would impose our labor and environmental standards on everyone else."⁵⁸

Other demonstrators denounced globalization itself as "purely and simply a way for capitalists to exploit the world's workers."⁵⁹ The President of Mexico, Ernesto Zedillo, called such demonstrators "globophobics—a curious alliance of forces from the extreme left, environmentalists and other self-appointed critics in a common endeavor to save the people of developing countries from development."⁶⁰ Michael Moore, the WTO's Director-General, wryly observed, "Globalization is the new 'ism' that everyone loves to hate."⁶¹

VII. CONCLUSION

In the end, there was no beginning. The Seattle conference did not commence a Millennium Round. When the WTO's General Council met a month later in Geneva, it merely affirmed the Uruguay Round commitment to re-open negotiations on agriculture and services later in 2000.⁶²

What lessons can be learned from the disaster of Seattle? Four suggestions follow:

- (1) Economic globalization benefits most people, but in particular nations and particular population groups within a nation, it causes economic and emotional insecurity—"rising income inequality, job insecurity in a rapidly changing and harshly competitive environment, and a sense of powerlessness and uncertainty about the future."⁶³

Paul Krugman described the anomaly well: "The reality is that globalization makes the world a richer place, but the wealth it creates goes disproportionately to two sorts of people. On one side are those who benefit from vastly improved access to technology and

57. Clay Robinson & Martin Crutsinger, *Protests Disrupt World Trade Talks; Seattle Imposes Curfew to Halt Anti-WTO Riots*, Hous. Chron., Dec. 1, 1999, at 1A.

58. Thomas L. Friedman, *Foreign Affairs: Senseless in Seattle*, N.Y. TIMES, Dec. 1, 1999, at A31.

59. Paul Krugman, *Reckonings: The Magic Mountain*, N.Y. TIMES, Jan. 23, 2000, at 15.

60. Thomas L. Friedman, *Foreign Affairs: 1 Davos, 3 Seattles*, N.Y. TIMES, Feb. 1, 2000, at A25.

61. Joseph Kahn, *Swiss Forum Has Its Focus On Memories From Seattle*, N.Y. TIMES, Jan. 29, 2000, at B1.

62. See Elizabeth Olson, *After Seattle, Trade Group Scales Back Its Agenda*, N.Y. TIMES, Feb. 8, 2000, at C4.

63. W. Bowman Cutter et al., *New World, New Deal*, FOREIGN AFFAIRS, Mar./Apr. 2000, at 97 [hereinafter Cutter]; see also DANI RODRIK, HAS GLOBALIZATION GONE TOO FAR? (Inst. Int'l Econ. 1997) (providing an evaluation of globalization's impact on job insecurity).

capital—which is to say, workers in developing countries. On the other are those in advanced countries who, directly or indirectly, have technology and capital to sell—which means the rich and the highly educated. Largely left out of the party, possibly even made worse off, are those who fall into neither category.”⁶⁴

- (2) The insecurity that globalization causes fuels a backlash of protectionism. By attacking international trade agreements and the WTO, on which management of that liberalization depends, this backlash impedes the liberalization of transnational trade and investment.

The backlash attacks international trade agreements by insisting that trade access should be conditioned on labor, environmental, and other standards dictated by the trade-receiving nation. In the words of a labor leader, “After Seattle, the demand for labor rights and other social standards can no longer be ignored. . . . Attention will turn to national and local politics; opposition to trading accords will build; and support for protection and subsidy will increase. Companies will find themselves increasingly vulnerable to exposure and embarrassment and to consumer boycotts and worker protests.”⁶⁵

The backlash attacks the WTO by insisting that its procedures be opened to the public and less dominated by its more affluent member-nations.

- (3) To avoid a breakdown of the global economy, the world’s trading nations must address this backlash both domestically and internationally. Domestically, every nation must find practical ways to alleviate the insecurity of its citizens, as by providing better education, more effective job retraining and unemployment compensation, and health and pension coverage that employees can take from job to job. Internationally, member-nations of the WTO must learn to resolve their trade disputes less contentiously, to improve the WTO’s policy-making

64. Krugman, *supra* note 59.

65. Jay Mazur, *Labor’s New Internationalism*, FOREIGN AFFAIRS, Jan./Feb. 2000, at 92; cf. Cutter, *supra* note 63, at 94-95.

[U]sing the WTO as the forum for multilateral environmental negotiations both endangers further trade liberalization and raises the risk that trade will be restricted in the name of environmentalism but in the service of protectionism. . . . Logically, labor rights and standards are development and political issues, not trade issues. There is no evidence that trade undermines labor standards and leads to an international ‘race to the bottom.’ In fact, the opposite is true.

Id.

process and public relations, and to involve less-developed members more confidently within the global economic system.

- (4) Faced with this insecurity and backlash, U.S. corporations can no longer afford to be complacent about their business opportunities abroad or their political invulnerability at home. If protectionism increases in the United States, so will reaction against U.S. exports and U.S. investments abroad. If U.S. citizens feel threatened by economic globalization, they will act out their insecurity against the U.S. corporations that they demonize as globalization's henchmen.

This is the ultimate lesson of Seattle. The world has entered a period of protectionist backlash against economic globalization. As a result, this is a time when U.S. corporations with transnational operations must learn to be wary and wise.